APPEAL NO. 170803
FILED JUNE 1, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). Contested case hearings (CCH) were held on September 29, 2016, and March 16, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to a left large suprapatellar injury; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. R) on March 14, 2014, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); and (3) the appellant's (claimant) IR is 18%.

The claimant appealed the hearing officer's determination arguing that the evidence supports a finding that the compensable injury extends to a left suprapatellar injury and that Dr. R's assigned IR of 18% is incorrect because it does not include impairment for post-traumatic stress disorder (PTSD), an accepted condition. The claimant urges that his IR should be 39% as certified by Dr. R in an amended certification which reflects a signature date of January 14, 2014.

The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed as reformed.

The claimant sustained a compensable injury on (date of injury), when involved in a motor vehicle accident. The parties stipulated that the compensable injury consisted of left knee medial collateral ligament tear, C5-6 disc herniation and radiculopathy, cervical sprain, PTSD, lumbar sprain, L4-5 disc herniation and radiculopathy, left knee internal derangement and a left femoral condyle injury. The parties further stipulated that the claimant reached MMI on February 26, 2014.

FINALITY OF FIRST CERTIFICATION

Section 408.123(e) provides that, except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means.

Section 408.123 also provides in part:

(f) An employee's first certification of [MMI] or assignment of an [IR] may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the [IR];

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or

(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid.

The hearing officer found that Dr. R's certification was a valid certification for purposes of Rule 130.12(c); that no compelling medical evidence was offered to establish an exception to finality under Section 408.123(f) and that the carrier did not dispute Dr. R's certification within 90 days following its receipt of written notice of the same by verifiable means on May 5, 2014. The hearing officer's findings of fact are supported by sufficient evidence. We note the hearing officer made no finding that the first valid certification from Dr. R assigned an IR of 18%; however, such fact is clear from the evidence and noted throughout the Discussion section of the hearing officer's decision.

In evidence is the Benefit Review Conference (BRC) Report which lists the following finality issue:

Did the first certification of [MMI] and assigned [IR] from [Dr. R] on [March 14, 2014] become final under [Section 408.123] and Rule 130.12?

At the CCH the parties agreed to the form of the finality issue, as stated on the BRC report. The hearing officer's decision also lists the finality issue exactly as stated in the BRC report.

In her Conclusion of Law No. 4 and in the Decision section and first paragraph of her Decision and Order, the hearing officer stated:

The first certification of [MMI] and assigned [IR] from [Dr. R], on March 14, 2014, became final under [Section 408.123] and Rule 130.12.

However, a review of the record reveals that, as stated by the hearing officer throughout the Discussion section of her decision, the first Report of Medical Evaluation (DWC-69) and accompanying narrative report from Dr. R is, in fact, dated March 4, 2014. There is no DWC-69 in evidence dated March 14, 2014.

Because Dr. R's first certification of MMI/IR was actually dated March 4, 2014, we reform Conclusion of Law No. 4, the Decision and the first paragraph of the Decision and Order to conform to the evidence and to provide that the first certification of MMI and assigned IR from Dr. R, on March 4, 2014, became final under Section 408.123 and Rule 130.12. The hearing officer's determination, as reformed, that the first certification of MMI and assigned IR from Dr. R, on March 4, 2014, became final under Section 408.123 and Rule 130.12, being supported by sufficient evidence, is affirmed.

IR

The hearing officer's determination that the claimant's IR is 18% is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

At the request of the claimant the hearing officer found good cause to add the following extent-of-injury issue:

> Does the compensable injury of (date of injury) [extend to] a left large suprapatellar injury?

While the hearing officer's determination that the compensable injury of (date of injury), does not extend to a left suprapatellar injury is supported by sufficient evidence we note that her Finding of Fact No. 3, Conclusion of Law No. 3 and Decision section of her Decision and Order refer only to a left suprapatellar injury rather than a left large suprapatellar injury as stated in the extent-of-injury issue. We accordingly reform Finding of Fact No. 3 to provide that the claimant's disputed condition of a left large suprapatellar injury did not arise out of or naturally flow from the compensable injury, nor was the condition, if pre-existing, enhanced, worsened, or accelerated by the work injury of (date of injury). We further reform Conclusion of Law No. 3 and the Decision section of the Decision and Order to conform to the evidence and to provide that the compensable injury of (date of injury), does not extend to a left large suprapatellar injury. The hearing officer's determination, as reformed, that the compensable injury of (date of injury), does not extend to a left large suprapatellar injury, being supported by sufficient evidence, is affirmed.

SUMMARY

We affirm as reformed the hearing officer's determination that the first certification of MMI and assigned IR by Dr. R on March 4, 2014, became final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to a left large suprapatellar injury.

We affirm the hearing officer's determination that the claimant's IR is 18%.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RICHARD GERGASKO, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge